Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-266
	)	
Rate Regulation	)	
	)	

COMMENTS OF THE NYNEX TELEPHONE COMPANIES

New York Telephone Company

and

New England Telephone and Telegraph Company

By: Mary McDermott
Shelley E. Harms

120 Bloomingdale Road
White Plains, NY 10605
914/644-2764

Their Attorneys

Dated: January 27, 1993

TABLE OF CONTENTS

SUMMARY

The NYNEX Telephone Companies urge the Commission to adopt cost allocation rules and rate regulations that will establish reasonable rates, free from cross-subsidy or predatory effect, for basic tier and cable programming services. Only by requiring initial rates to be based upon service costs, and by imposing strict rules against cross-subsidy, can the Commission break the cycle of monopoly rents, guard against predatory pricing, and ensure that regulated cable services do not unfairly subsidize other cable company activities.

Once rates are initialized using cost allocation and simplified cost of service methods, the NTCs recommend that a price cap benchmark govern changes in rates. Rate changes outside the price cap bands, and rates for new services, should be cost justified.

The NTCs support the Commission's proposal to unbundle rates for cable customer premises equipment and home wiring from rates for cable services. The Commission should separate the costs of this equipment and wiring from regulated services, and should require disclosure of network interfaces for interconnection with cable company networks. With adequate safeguards in place, the Commission should allow the competitive marketplace to govern the rates for this wiring and equipment.

Leased access channels have the potential to provide alternate programming sources and competition for cable company monopolies, if the Commission requires reasonable rates according to the methodology recommended for cable services, and provides for reasonable and nondiscriminatory access to channel capacity. Among the terms and conditions the Commission should require are network disclosure and interconnection at the cable company's headend and at other points in a cable company's network.

The procedures the Commission proposes for implementing and enforcing its new rules generally lack uniformity and do not provide sufficiently for notice to and participation by interested parties. The Commission should make its rules more consistent, and should provide the opportunity for meaningful participation by interested parties, whether the proceedings are handled by the local franchising authority, state cable commissions, or the Commission.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-266
	)	
Rate Regulation	)	

COMMENTS OF THE NYNEX TELEPHONE COMPANIES

New England Telephone and Telegraph Company and New York Telephone Company (the "NYNEX Telephone Companies" or "NTCs") respectfully submit their Comments on the rate regulation proposals in the Commission's Notice of Proposed Rulemaking dated December 24, 1992 ("NPRM").

I. RATE REGULATIONS FOR CABLE SERVICES AND EQUIPMENT

The NYNEX Telephone Companies believe that competitive markets should be free from regulation so as to allow market forces to determine prices and the success of competitors. In telecommunications, new players are entering the markets for local exchange services and access transport, and as these markets become more competitive they should increasingly be governed by market forces, not regulation. Provided that

competition emerges in the provision of cable television, the same should be true of cable TV.

However, in regulating basic tier and cable programming service rates, the Commission must recognize that today virtually all cable operators have a monopoly in their local franchise areas. Very few cable companies are subject to competition,[1] and many cable rate increases have been due to market power.[2] The Commission should design its rate regulations so as not to perpetuate these monopoly rates.

On the other hand, the Commission should not attempt to maintain an artificially low basic service tier rate.[3] Keeping basic rates (or cable programming rates) artificially low would give large cable companies a competitive edge, and would discourage the entry of new competitors.

Another concern is cross-subsidies from basic tier and cable programming services to competitive services, such as

---

1 1992 Cable Act § 2(a)(2); In the Matter of Competition, Rate Deregulation and the Commission's Policies Relating To The Provision of Cable Television Service, MM Docket No. 89-600, Report, July 26, 1990 ¶ 98 ("The number of directly competitive second cable systems is relatively small, with commenters reporting 40 to 49 directly competitive systems currently in operation"); "Cable Firms Say They Welcome Competition But Behave Otherwise," Wall Street Journal, September 24, 1992, p. A1 ("fewer than 1% of the cable markets in the U.S. are served by two or more providers").

2 House Committee on Energy and Commerce, H.R. Rep. No. 102-628, 102d Cong. 2d Sess. (1992)("House Report") p. 33; U.S. General Accounting Office, Report to the Chairman, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, House of Representatives, Follow-up of National Survey of Cable Television Rates and Services, June 13, 1990, p. 51.

3 See NPRM ¶ 32.

telephone services. Cable companies are moving aggressively into telephone,[4] and indications are that they may use their monopoly rents from cable television to subsidize these telephone ventures.[5]

The Commission should frame its rate regulations for basic tier and cable programming services to produce the most reasonable regulatory process and rates for cable companies, customers, competitors and regulators. In light of the basic principles and concerns outlined above, the Commission should give great weight to those statutory factors predicated on actual costs to provide service.[6] Rates should ensure that

---

4 Cox Cable, TCI, Comcast and Continential Cablevision have all invested heavily in Teleport. See "Continential and Comcast Each Acquire 20% Share of Teleport," Fiber Optics News, December 28, 1992. Within the NYNEX Region alone, at least six cable operators have applied for a Certificate of Public Convenience and Necessity to provide telecommunications services, and nine cable companies have received experimental licenses for Personal Communications Services.

5 For example, testimony by the Vice President of Hyperion Telecommunications of Vermont before the Vermont Public Service Board, acknowledges that Hyperion's parent company, Adelphia, also owns two cable companies in Vermont, that Hyperion will use cable company facilities to provide telephone service, and that Hyperion is financed and will continue to receive financial backing from Adelphia. Prefiled Testimony of Randolph Fowler, Application of Hyperion Telecommunications of Vermont, Inc. for a certificate of public good authorizing it to provide telecommunications service in Vermont, Docket No. 5608, State of Vermont Public Service Board, November 12, 1992.

6 Indeed, five of the seven statutory factors to be considered in regulating the basic service tier are related to costs. Such factors include direct costs, a reasonable and properly allocable portion of joint and common costs, taxes, fees and franchise costs, and a reasonable profit or return on investment. 1992 Cable

(Footnote Continued On Next Page)

costs associated with providing a service are recouped by that service while keeping rates to subscribers within reasonable levels. Rates for the basic tier or cable programming service should not be subsidized by other services, nor should these services be allowed to subsidize other services. As with cost allocation between regulated and nonregulated activities of telephone companies, the FCC should require each cable activity to cover its fully distributed costs.[7]

A. Rates For The Basic Service Tier And Cable Programming Service

1. Development Of Initial Rates Based On Service Costs

The Commission should adopt a combination of its benchmarking and cost-based approaches, as well as cost allocation rules, to regulate both the basic service tier and cable programming services. For initial rates, the Commission must require cost-of-service justification, because of the lack of scrutiny of costs and rates since 1984, and the fact that cable companies have extracted monopoly rents since deregulation. An initial cost of service measure is essential

---

6 (Footnote Continued From Previous Page)

Act, § 623 (b)(2)(c); NPRM ¶ 30. Two of six factors the Commission must consider in regulatory cable programming services are related to costs. 1992 Cable Act § 623(c)(1)(A); NPRM ¶ 90.

7 Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activity, Report and Order, 2 FCC Rcd. 1298 (1987).

to fulfill Congress' mandate that the FCC establish "reasonable rates."[8]

Full cost of service regulation, however, is not required.[9] The simplified cost accounting mechanism described in Appendix A to the NPRM, used to develop service unit costs, is an appropriate tool for identifying the costs for initializing rates. This mechanism will provide local franchising authorities the basis for approving initial rates for the basic service tier, and will provide the Commission the basis for disapproving unreasonable initial rates for cable programming services.

Service unit costs should include direct investment costs stated on an annualized basis; depreciation; a reasonable rate of return (debt and equity); and federal, state and local income taxes. Unit costs should include all direct operating expense and the direct costs associated with payments to cable networks; retransmission fees; and costs of franchise requirements. Allocations of support investments must be made, including: land and buildings; power supply; motor vehicles; test equipment; operating expenses; and all other non-direct investments used in the operation of the cable business. These support investments should be annualized, as with direct

---

8 1992 Cable Act §§ 623(b)(1) (rates for basic service tier must be "reasonable"), and 623(c)(1) (rates for cable programming service must not be "unreasonable"). In effect, rates for both types of services must be reasonable, and the NTCs propose that the same standards for reasonableness of rates should apply to basic tier and cable programming services. See NPRM n. 127.

9 NPRM ¶¶ 53-61.

investments, and allocated according to a ratio of support investment to direct investment. Joint and common expenses should also be allocated to the service unit costs. There should also be a fair attribution of transport costs between basic tier and cable programming services, or between other service categories established by the Commission.

Cost of service as a means to determine initial rates will protect against monopoly rents as well as predatory pricing. It will provide the most appropriate starting point for the incentives of price cap regulation.[10] Neither local franchising authorities nor the Commission will have to develop new service unit cost methodologies, since the Commission and most state regulators have used these methods in the past to set rates for telephone companies. These methods are easily adaptable to cable services.

2. Introduction Of Price Cap Regulation

Once rates have been initialized using the cost of service method described, increases and decreases in rates thereafter should be governed by a price regulation benchmark. As the Commission has recognized, price regulation will provide incentives for cable companies to produce and keep profits that result from increased efficiencies,[11] once the appropriate

---

10 Initial rates for local exchange carriers under price cap regulation were rates as they existed under prior cost of service regulation. Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd. 6786 (1990) ("LEC Price Cap Order") ¶ 301.

11 LEC Price Cap Order, 5 FCC Rcd. 6786 at ¶ 2.

starting point has been determined using service costs. Price caps, as the form of price regulation, carefully balances the interests of both ratepayers and shareholders, and produces reasonable, stable rates. Higher earnings retained by the company may be invested in infrastructure to ensure continuing improvement in productivity and efficiency.

The price cap formula used to regulate AT&T and the local exchange carriers (GNP-PI[12] - productivity offset + exogenous costs) will work to regulate the cable companies as well. GNP-PI is the appropriate measure of inflation.[13] A productivity offset should be used, but historical productivity estimates need to be developed for the industry.[14] Cable companies should also be allowed to recover or otherwise adjust their rates to account for exogenous costs (costs beyond the cable companies' control, such as accounting rule changes).

Baskets of services to which the price cap index will be applied should be established.[15] The baskets/service categories will serve to guard against cross-subsidization, will help ensure nondiscriminatory rates, and will permit a degree of pricing flexibility. The basic service tier could be a single basket containing multiple service categories, while cable

---

12 Gross National Product - Price Index.

13 LEC Price Cap Order, 5 FCC Rcd. 6786 at ¶ 50.

14 Increases in profits since deregulation may not have been the result of cable industry efficiency gains and may need to be "netted out" of the historical productivity estimates.

15 See LEC Price Cap Order, 5 FCC Rcd. 6786 at ¶ 11.

programming services could be regulated in a different basket. Each service category should have pricing rules (allowing some pricing flexibilities) which govern the extent to which prices can be changed in a given year.

Cable companies should be required to file annually the price cap indices, along with price cap changes reflecting changes in inflation and exogenous adjustments. For price changes within the price cap bands, filings should be required to be made giving fourteen days' notice of the change. Any price change outside the band must be cost justified.[16] These filings should be examined by the franchising authority or the Commission, as appropriate, to determine whether the change is within the benchmark.[17]

Increases and decreases in rates should be presumed reasonable if they are within the limits permitted by the price cap benchmark. Rates above the benchmark should be presumed unjustified and suspect for subsidy generation, and should be lowered unless justified by a service cost showing. Rates below the benchmark should also be presumed unjustified and suspect for predatory pricing, and should be raised to be within the

---

16 NPRM ¶ 33. For new basic services or programming, as well, cable companies should provide the same type of cost justification as was required for initializing rates. See Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Report and Order, Order on Reconsideration, and Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd. 4524 (1991).

17 Such filings should also be made available to the public, and interested persons should have the opportunity to participate in proceedings or challenge their outcome, as discussed in Section C, infra.

benchmark limits unless justified with appropriate cost support.[18]

3. Cost Allocation

The Commission requests comment on whether, in determining a regulatory framework, it must consider the impact of regulation on an individual tier, cable services as a whole, and/or company enterprises as a whole, including other cable systems and lines of business.[19] It is imperative that regulated basic and cable programming services be "non-structurally" separated from other activities of the cable companies.[20] Rates from regulated services must not be used to subsidize competitive services, including local telecommunications and carrier access services. It is also important to ensure that basic tier rates are not used to subsidize rates for premium channels, and vice versa, and that cable companies may not subsidize rates in one franchise area with revenues from other areas. The objective of non-structurally separating the cable services from other activities can be accomplished by developing cost accounting rules similar to those used by telephone companies to keep the

---

18 See NPRM ¶ 33.

19 NPRM n. 66.

20 Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, Report and Order, 2 FCC Rcd. 1298 (1987) ¶ 33 ("insuring just and reasonable rates for services that remain subject to regulation requires guarding against cross-subsidy of nonregulated ventures by regulated services").

revenue from regulated services from subsidizing nonregulated services.[21] It is critical to establish and implement these cost allocation rules before initial rates are set; otherwise, the cross subsidies will be built in to the initial rates and price caps will perpetuate the problem.

* * * *

Thus, the NYNEX Telephone Companies recommend cost allocation requirements to ensure that cable revenues do not subsidize other ventures, simplified cost of service methods to establish initial rates and to justify subsequent price changes outside of the benchmark, and a price cap benchmark to govern price increases and decreases.[22] The NTCs also recommend that the Commission, state cable commissions, and local franchise

---

21 Although price caps reduce any incentive to cross-subsidize, the Commission has found that they do not alone eliminate improper cost allocation, but instead should serve "as an effective complement to cost accounting, reporting, auditing and enforcement safeguards." Computer III Remand Proceedings: Bell Operating Company Safeguards, Notice of Proposed Rulemaking and Order, 6 FCC Rcd. 174 (1990) ¶ 25.

22 The other potential benchmarks cited in the NPRM suffer from serious problems that weigh against using them: Given the small number of systems that face effective competition, rates based on those charged by such systems would be based on limited and unreliable data and would be difficult to extrapolate to other cable systems. Use of past regulated rates would reflect only those cable companies in operation, and conditions in effect, at that particular time; these would be difficult to adapt to the different conditions and cable companies of today. Average rates of cable systems, or rates based on "typical" costs, could provide windfalls to some, and unfair disadvantages to other cable companies, and could only be justified for those companies whose actual costs are close to the average. NPRM ¶¶ 33-34, 40-48, 92-93.

authorities monitor the success of this regulatory program.[23] These methods will best accomplish the goals of reasonable cable rates and a level playing field for competitors.

B. Rates For Equipment

The NYNEX Telephone Companies support the Commission's proposal to unbundle the rates for cable customer premises equipment and home wiring from the rates for cable services.[24] The Commission should require cable companies to separate the costs of the equipment, based on a fully distributed cost methodology that includes both direct and indirect costs, from costs and rates for regulated services. Installation costs should be handled in essentially the same way except that deaveraged time and material charges should be utilized for the home wiring portion.[25]

---

23 See LEC Price Cap Order, 5 FCC Rcd. 6786 at ¶ 20 (requiring periodic reports to measure the success of regulation and ensure high quality service).

24 NPRM ¶ 63. The NTCs do not believe such equipment and wiring can or should be separated between that used for the basic tier and that used for cable programming service. The Commission should treat all such premises equipment and wiring in the same manner.

25 The benefits of such an approach would be like those of unbundling telecommunications CPE from regulated services. See Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980) ¶¶ 149-167. With respect to the potential for competition in installation of cable premises equipment and wiring (NPRM ¶ 63), video dialtone providers are certainly a potential source of such competition. Also, given the competition in provision and installation of telecommunications CPE and wiring, it is reasonable to expect similar competition to emerge in the cable equipment and wiring markets. See In the Matter of

(Footnote Continued On Next Page)

Further, the Commission must use the cost allocation methodology discussed in Section A in connection with rates for cable services to ensure that cable operators do not use their monopoly position to subsidize their own CPE or to unduly influence customers to buy or lease it. It is critical to a competitive market for wiring and CPE that interface information for the connection of wiring and equipment to cable company networks be publicly available. The Commission must require cable companies to disclose their network interfaces to the public with sufficient time for wiring and CPE to be built to these specifications. In addition to network disclosure rules, the Commission should impose other rules similar to those that apply to deregulated telecommunications CPE, including rules governing use of customer proprietary network information and nondiscrimination reporting requirements.[26]

With such safeguards in place, the Commission should allow competition to govern the prices for cable customer

---

25 (Footnote Continued From Previous Page)

Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, CC Docket Nos. 91-141, 92-222, October 19, 1992 ¶¶ 8, 13; Detariffing the Installation and Maintenance of Inside Wiring, Third Report and Order, 7 FCC Rcd. 1334 (1992) ¶ 9.

26 Furnishing of Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies, Report and Order, 2 FCC Rcd, 143 (1987). However, the rules should take into account advances in technology that have occurred since the Commission's CPE rules were implemented. Cable companies and their competitors should be able to deploy equipment on the network side of the demarcation point that will provide the most efficient and economical use of the network.

premises equipment and home wiring.[27] This will guard against the types of anticompetitive conduct and customer gouging that concerned Congress,[28] while it minimizes the regulatory burden on the cable companies and the Commission.

C. Procedural Considerations

The Commission asks for comments on the procedures for determining whether a cable company is subject to effective competition and therefore exempt from regulation of cable service rates,[29] the procedures for approving or revoking a franchise authority's certification that it is ready and able to regulate,[30] and the procedures for implementing and enforcing rate regulation for cable services and equipment.[31] The NTCs urge the Commission to require that these proceedings be open for comment and participation by all interested parties.

It is reasonable to require local franchising authorities to make an initial determination as to whether a

---

27 Similar regulation has produced "important benefits . . . such as reduced rates, a larger variety of service options, and more rapid deployment of new technologies" in the telephone CPE market. In the Matter of Expanded Interconnection with Local Telephone Company Facilities, CC Docket Nos. 91-141, 92-222, Report and Order and Notice of Proposed Rulemaking, October 19, 1992 ¶¶ 8, 13.

28 See House Report pp. 83-84.

29 NPRM ¶¶ 17-18.

30 NPRM ¶¶ 19-29.

31 NPRM ¶¶ 79-89, 97-110.

cable company is subject to effective competition.[32] The Commission is also correct that the determination must be made as to each local franchise area.[33] However, the NPRM does not specify the procedures the local authority should use in making the initial determination. Also, astonishingly in light of the statute's statement that it is the FCC that determines whether a cable company faces effective competition, the NPRM does not provide for FCC review of each initial finding that effective competition exists.[34]

The Commission should make clear that the proceedings before the local authority must be open for participation by all interested parties, including competitors and consumers.[35] In

---

32 NPRM ¶ 17. An alternative would be to have state cable commissions make initial determinations as to effective competition. The state commissions are not as "close" to the local environment and may be more objective, and the commissions will be less burdened by other aspects of regulating cable companies than the local franchising authorities.

33 NPRM ¶ 18. Only after the determination is made as to each franchise area could the individual determinations be combined to allow the FCC to regulate cable programming services on a system-wide basis.

34 See 1992 Cable Act § 623(a)(2); NPRM n. 37.

35 The Commission asks "whether a telephone company offering of 'video dialtone' . . . would qualify as a 'multichannel video programming distributor'" for purposes of analyzing whether a cable company is subject to effective competition. NPRM ¶ 9. As has been discussed (and as the Commission has tentatively concluded) in other proceedings implementing the 1992 Cable Act, telephone companies providing video dialtone service are not "multichannel video programming distributors" under the Act because they do not select, buy or package video programming, nor do they provide the programming itself to subscribers. See 1992 Cable Act § 2(c)(6), § 628(b); In the Matter of Implementation of the Cable Television Consumer Protection

(Footnote Continued On Next Page)

the cases of an initial finding of effective competition, the Commission should provide not only for participation by all interested parties before the franchise authority, but also for automatic review of such a finding, with participation of interested parties, by the the Commission.

The Commission does provide for participation by interested parties in proceedings on changing a cable operator's status to "subject to effective competition," after an initial determination that cable operator lacks effective competition.[36] However, even in connection with changes in the company's status, the procedures proposed are inadequate, because they do not provide for review by the Commission of an unfavorable ruling. In the same way as cable operators may appeal a finding that they lack effective competition,[37] interested parties should be able to appeal initial and subsequent findings by a franchise authority that a cable company is subject to effective competition.

---

35 (Footnote Continued From Previous Page)

and Competition Act of 1992, Broadcast Signal Carriage Issues, MM Docket 92-259, Notice of Proposed Rulemaking, November 19, 1992 ¶ 2. However, it may be possible that a telephone company's programmer-customers for video dialtone service may be considered multichannel video programming distributors. See In the Matter of Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage, MM Docket 92-265, Comments of the NYNEX Telephone Companies, January 25, 1993 pp. 2-3.

36 NPRM ¶ 28.

37 NPRM ¶ 28.

The Commission should also provide for the re-regulation of rates should competitive conditions change. If "effective competition" subsequently declines below the established criteria for a cable system that had previously been subject to effective competition, the surviving cable system's rates should again become regulated.

In connection with approval of a franchising authority's certification (including its determination that a cable company lacks effective competition), the Commission proposes to consider the submission of the franchising authority alone, because of the expedited deadlines in the 1992 Cable Act.[38] This is reasonable, so long as the Commission permits interested parties to participate before the local authority, to seek reconsideration or clarification of the Commission's decision, and to challenge the Commission's decision by filing a petition for revocation once a certification is effective. The NTCs emphasize that interested parties must have the opportunity to be heard.[39]

---

38 NPRM ¶ 23.

39 The Commission states that when a local authority does not submit a certification, the 1992 Cable Act does not appear to give the FCC the authority to initiate regulation of basic tier rates. NPRM ¶ 15. Such an interpretation is clearly not in accord with Congressional intent to ensure reasonable rates for cable services. 1992 Cable Act § 623(b). If a local authority does not step up to the task, Congress certainly did not intend to leave cable companies not subject to effective competition unregulated. Thus, the Commission must provide for procedures to assume authority itself to regulate basic tier rates when the local authority cannot or does not certify that it will undertake the task itself.

In connection with the revocation of a franchising authority's certification, the Commission proposes to allow a cable operator or other interested party to petition for revocation and serve a copy on the franchising authority, that the authority be allowed to respond, and that "a cable operator or other party" be allowed to reply.[40] These procedures should provide for notice to the public (not just to the franchising authority), and that all interested parties (not just the franchising authority or "a" cable operator or other party) may participate in the response and reply rounds.

With respect to regulation of basic tier rates by the franchising authority, the Commission proposes to permit any interested parties to participate.[41] The NTCs support this proposal; it should include clear requirements for notice to the public (not just subscribers) of rate proceedings, and pleading cycles that, while expeditious, give adequate time for meaningful participation.

With respect to regulation of cable programming services, the Commission proposes procedures for bringing complaints to challenge unreasonable rates.[42] Apparently the Commission does not plan to review initial rates and subsequent price increases and decreases for cable programming services, to

---

40 NPRM ¶¶ 26-27.

41 NPRM ¶ 84.

42 NPRM ¶¶ 97-110.

determine whether the rates are unreasonable.[43] At the very least, then, initial rate information and subsequent rate changes must be filed with the Commission and made public so that any interested party may challenge their compliance with the Commission's guidelines for reasonable rates,[44] according to the complaint procedures proposed. In addition, the Commission should provide for complaints by any injured party in connection with violations of rate regulations governing basic tier services and equipment.

II. RATES, TERMS AND CONDITIONS FOR LEASED CHANNELS

Requiring cable operators to lease a portion of their channel capacity on reasonable and nondiscriminatory terms and conditions could have a very positive effect on the development of alternate programming sources. But it will take active involvement by the FCC to ensure that leasing arrangements truly meet the needs of potential competitors. In particular, leased access customers must have flexibility to interconnect at nodes throughout the cable network in order to most effectively use leased channel capacity.

In general, the NYNEX Telephone Companies recommend that the Commission impose the general requirements that (1) a cable operator must offer channel capacity to unaffiliated entities on nondiscriminatory prices, terms and conditions, and

---

43 If the Commission does review the rates, then interested persons should be given notice of the proceeding and an opportunity to participate.

44 See Section I(A), supra.

(2) a cable operator may not refuse a reasonable request for channel capacity.[45] These requirements provide the general umbrella under which more specific regulations can be prescribed.

To ensure that prices, terms and conditions are reasonable and nondiscriminatory, the Commission should consider a form of Open Network Architecture for leased channels.[46] To ensure technical equality of treatment and reasonable access to leased channel capacity, the Commission should impose network disclosure rules upon cable operators, requiring them to make public the interfaces for interconnecting leased access customers a reasonable period of time before the cable company itself may use the new interface.[47]

These interfaces should be disclosed, and interconnection permitted, for the cable company's headend, as well as at interconnection nodes throughout the cable company's network at points where fiber meets coaxial cable technology. With sufficiently detailed interconnection information, other providers will be able to plan the types of services that can be provided using cable company channel capacity; for example,

---

45 These requirements would apply to the channel capacity set aside for commercial use pursuant to 47 U.S.C. § 532(b), and should also apply to any excess capacity on the cable operator's system.

46 See, e.g., Amendment of Sections 64.702 of the Commission's Rules and Regulations, Computer III Inquiry, Phase I, Report and Order, 104 F.C.C. 2d 958 (1986) ¶¶ 127-131, 147-166, 171-186, 210-219.

47 Id. ¶¶ 246-255.

if a cable system has two-way communications capability, then an unaffiliated provider could use leased channels for interactive services. With a choice of different interconnection points in a cable company's network, the unaffiliated provider could use the leased channels for services tailored to a particular community or neighborhood's interests. For example, with interconnection at various points in Manhattan, a provider could use one channel to deliver medical programming in areas near hospitals, international programming near the United Nations, and arts-related programming in the Lincoln Center area.

One specific regulation governing nondiscriminatory access to leased access channels must be that cable operators may not discriminate in prices, terms and conditions based on the content of the programming to be provided by the unaffiliated entity.[48] Independent programmers should not have to consult with the cable operator as to content; nor should cable operators be put in the position of policing content provided by others.

The Commission must also impose regulations related to billing and collection for leased access channels.[49] If the

---

48 The only exception to this principle is limited to the specific rules for indecent programming under other provisions of the 1992 Cable Act and the Commission's rules. 1992 Cable Act § 612(h), (j); Implementation of Section 10 of the Cable Consumer Protection and Competition Act of 1992, Indecent Programming and Other Types of Materials on Cable Access Channels, Notice of Proposed Rulemaking, MM Docket No. 92-258, FCC 92-498, November 10, 1992.

49 NPRM ¶¶ 146, 152.

Commission concludes, as it proposes, that cable operators are not required to provide billing and collection services to leased channel customers,[50] then it must at a minimum require the cable companies to provide their leased access customers with the information necessary to bill customers, so they can bill and collect themselves or hire another company to do so. Such a requirement is also a necessary prerequisite for any finding that billing and collection is a competitive service.[51] Moreover, the Commission should require that, if a cable operator provides billing and collection to any leased access customer, it must offer billing and collection to all others on nondiscriminatory terms and conditions.

With respect to pricing, the guidelines for establishing rates for basic tier and cable programming services should also apply to leased access channels; that is, simplified cost of service standards should apply to initialize rates and to justify increases or decreases outside of the range permitted by the price cap formula, which would otherwise govern rate increases and decreases. Cost allocation rules to prevent cross subsidies should also apply to leased access channels.[52]

To ensure nondiscriminatory, reasonable access to leased channel capacity, the Commission should prohibit cable

---

50 NPRM ¶ 146.

51 See Detariffing of Billing and Collection Services, Report and Order, 102 F.C.C. 2d 1150 (1986) ¶ 38 and n. 53.

52 See Section I(A), supra.